Appendix D-1

DUPLICATE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WE B — JUDGE ALAN B. HABER

SANTA MONICA BEACH LTD., Plaintiff,
vs.
SANTA MONICA RENT CONTROL BOARD, et al.,
Defendants.

No. SS 005 266

TRANSCRIPT OF PROCEEDINGS
JULY-27, 1995

APPEARANCES:

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ORIGINAL

Appendix D-2

LOS ANGELES, CALIFORNIA; WEDNESDAY, JULY 27, 1995

DEPARTMENT WE B JUDGE ALAN B. HABER

APPEARANCES:

Counsel for the Plaintiff, NATHAND. SCHMIDT, Esq.;

Counsel for the Defendants, RALPH E. GOLDSEN, Esq.

THE COURT: 39, Santa Monica Beach Limited versus Santa Monica Rent Control Board.

MR. SCHMIDT: Good afternoon, your Honor. Nathan Schmidt representing Plaintiff Santa Monica Beach Limited.

MR. GOLDSEN: Good afternoon, your Honor. Ralph Goldsen for Defendant Santa Monica Rent Control Board.

THE COURT: Anything not in the briefs that you would like me to consider?

MR. SCHMIDT: I'd like to briefly --

THE COURT: They're pretty extensive, and I really would appreciate showing some restraint, and not attempting to argue matters that I've already considered in the brief.

Look, I understand. If I were in your position, I would not be content with the tentative ruling, but it's not going to -- Look, first of all, I have to tell you, I have1 to admit that this area of law is extremely -- it's not completely foreign to me. It's maybe once every couple of months that I get involved.

It may not be esoteric to you gentlemen, and certainly someone that's dealing with the -- representing the Rent Control Board, and you seem like you sure know your oats when it comes to the issue of regulatory taking and inverse condemnation. You both know a lot more than I do about the subject. And I really -- I had a struggle with -- not because -- I'm not criticizing your briefs, but it's a very, very, for me, esoteric area of law, and I had to put a lot of time in, and I came

to a conclusion. And the bottom line is, it's not going to do a lot of good for you to rehash it in my presence right now.

MR. SCHMIDT: Okay. I'd just like to make one very brief response, then, to the Rent Board's reply.

THE COURT: If it will make you feel better, go ahead.

MR. SCHMIDT: It would make me feel better, your Honor.

THE COURT: Get it out of your system.

MR. SCHMIDT: Thank you.

THE COURT: Okay.

MR. SCHMIDT: I just wanted to point out that I feel that the Rent Board mischaracterizes the importance of the Supreme Court's action in the *Erlich* (phonetic) case in its reply, in stating that we cite it simply for the reason to show that it was granted certiorari. The Supreme Court did far more than grant certiorari in the case. They vacated the decision, remanded it for a further action by the Court of Appeals, in light of the heightened scrutiny established by the *Dolan* (phonetic) case.

The *Erlich* decision, or the *Erlich* case, related strictly to a monetary exaction. There's no argument that that relates to the logic of blue-jeans equity, which attempted to characterize *Dolan* as "possessory takings." It was strictly money that was demanded in exchange for a building permit.

THE COURT: I see.

MR. SCHMIDT: And on remand, the Court of Appeals did apply the Dolan standard to that monetary exaction, applied heightened scrutiny. And I can't give your Honor a cite at the moment. As you may be aware, that's currently been briefed and awaiting argument before the California Supreme Court, but the Court of Appeals did follow the Supreme Court, and did apply that heightened scrutiny standard to a purely regulatory taking.

THE COURT: All right. Do you feel the need to be heard?

MR. GOLDSEN: No, I don't, your Honor.

THE COURT: All right. Thank you. All right. As I told you, I hate to sound disinterested, but I did the best I could with my review of the briefs, and I am prepared to sustain the demurrer to the first amended complaint cause of action for inverse condemnation, without leave to amend. Either I'm right or I'm wrong with respect to my ruling, and I don't think it would do any good to give leave to amend. The issue is joined, and if I'm wrong, I'm sure I'll hear about it.

I find the Plaintiff cannot cure the pleading defects. I find the rational basis test applies to regulatory takings. Is notice waived?

MR. SCHMIDT: No, your Honor. We'd like notice.

MR. GOLDSEN: I would like to give notice.

THE COURT: All right. Thank you.

MR. GOLDSEN: Thank you.

MR. SCHMIDT: Thank you, your Honor.

THE COURT: You're welcome.

(Proceedings in the above-entitled matter were concluded.)

Appendix D-5

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT WE B JUDGE ALAN B. HABER

SANTA MONICA BEACH LTD.,) No. SS 00
)
Plaintiff,)
)
vs.)
)
SANTA MONICA RENT)
CONTROL BOARD, et al.,)
)
Defendants.)
)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, MARY ANN BRIGGS, a duly designated transcriber, do hereby declare and certify under penalty of perjury that I have caused to be transcribed the portion of tape 1 which was duly recorded in the Superior Court of the State of California, County of Los Angeles, Department WE B, on the 18th day of July, 1995, in the above-mentioned case, and that the foregoing pages comprise a true and correct, accurate transcription of the aforementioned tape.

Dated this 18th day of August, 1995.

/s/ MARY ANN BRIGGS
Transcriber

APPENDIX E

Appendix E-1

Filed 5/15/95

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SANTA MONICA BEACH, LTD., Petitioner and Plaintiff, v. SANTA MONICA RENT CONTROL BOARD, Respondent and Defendant. DENNIS POWER, DAVID COOPER, DENNIS SEVIER, ROBERT GROSSBARD, DOROTHY CONSTANTINE, MARGARETE HELL, IGOR MEDZHIBOVSKY, DANIEL WAX, MICHAEL HAMMERSCHMIDT, HAI VU, CHRISTOPHER CUSE, NADINE CUSE, TIMOTHY BLOCK, and DOES 1 through 15, inclusive, Real Parties in Interest.	No. SS005266 FIRST AMENDED COMPLAINT FOR INVERSE CONDEMNATION AND PETITION FOR WRIT OF ADMINISTRATIVE MANDATE (CCP § 1094.5)

* Petitioner and plaintiff Santa Monica Beach, Ltd., (plaintiff) respectfully seeks an order from this Court declaring that the Santa Monica Rent Control Charter Amendment effects an uncompensated regulatory taking of property as applied to plaintiff. Plaintiff also seeks an award of monetary compensation and petitions this Court for a Writ of Administrative Mandate directed against respondent and defendant Santa Monica Rent Control Board under Code of Civil Procedure § 1094.5. By this verified petition and complaint, plaintiff alleges the following:

PARTIES

1. Plaintiff Santa Monica Beach, Ltd., a limited partnership, is the legal record owner of a 12-unit residential rental property located at 928 Sixth Street, Santa Monica, California, County of Los Angeles (Property). The Property is subject to the provisions of Article XVIII, Charter of the City of Santa Monica, commonly known as the Santa Monica Rent Control Charter Amendment (Charter Amendment).

2. Respondent and defendant Santa Monica Rent Control Board (Rent Board or Board) is the public agency charged with administering the provisions of the Charter Amendment and its Rent Control Regulations.

3. Real parties in interest are now renters or residents of the Property who pay rent to plaintiff in amounts subject to control under the Charter Amendment.

4. Plaintiff is ignorant of the true names and capacities of real parties in interest designated herein as Does 1 through 15, inclusive, and therefore designates these parties by such fictitious names. Plaintiff will amend this complaint and petition to allege their true names and capacities when ascertained.

ALLEGATIONS

5. In April of 1979, the City of Santa Monica adopted the Santa Monica Rent Control Charter Amendment, now codified

at Article XVIII, §§ 1800 through 1820, of the Santa Monica City Charter. The Charter Amendment is a comprehensive rent control scheme which creates the Rent Board, requires that owners register each rental unit and pay annual registration fees to the Rent Board, establishes maximum allowable rents, provides for annual general adjustments and individual adjustments of allowable rents, prohibits evictions except for specified reasons, and prescribes remedies for violations of its provisions. A true copy of the Charter Amendment is attached hereto as Exhibit 1.

6. Residents of the City of Santa Monica were subjected to the Charter Amendment continuously between 1980 and 1990. Over this decade, Santa Monica's stock of rental housing declined by nearly 5% while the rental housing supply *increased* in all comparable Southern California cities without rent control.

7. As set forth at Charter Amendment § 1800, the stated purpose of the Charter Amendment is to assist "the poor, minorities, students, young families, and senior citizens." In practice, however, rent control has been an agent of gentrification in Santa Monica. During the rent-controlled decade of the 1980s Santa Monica experienced a loss of 775 low-income renter households, a decrease of nearly 12%. The number of low-income renter households *increased* over this period in every comparable city in Southern California without rent control. Santa Monica also lost 285 very low-income renter households during the city's first decade of rent control. This was the largest decrease in the number of very low-income renters of any comparable Southern California city.

8. Concurrent with this exodus of economically disadvantaged renters under rent control, Santa Monica experienced a 37% increase in the proportion of households with very high incomes between 1980 and 1990. This population shift toward upper-income households occurred during a decade when the proportion of very high-income households *dropped* by more than 8% in Los Angeles County as a whole.

9. Under rent control, housing in Santa Monica has become increasingly unavailable to young families. Between 1980 and 1990, the number of family households with children in Santa Monica fell by 1,299, a decline of more than 6%. No comparable city in Southern California without rent control lost family households over the decade of the 1980s.

10. The impact of rent control has been especially harsh on young families headed by a mother with no spouse. The number of female-headed households with children under 18 in Santa Monica fell by 593 between 1980 and 1990, a decrease of more than 27%, despite an *increase* in such households in Los Angeles County as a whole.

11. Under rent control, Santa Monica's elderly population (aged 65 or over) declined by 1.7% between 1980 and 1990. This decrease is especially remarkable because the elderly population of Los Angeles County *rose* by more than 15% over the same decade. The elderly population increased over this period in every comparable city without rent control in Southern California.

12. The Charter Amendment charges the Rent Board with the responsibility to receive and review petitions for rent adjustments and complaints. The Rent Board is empowered to conduct hearings, receive evidence, and make decisions regarding individual rents within the City.

13. Section 1805(e) of the Charter Amendment mandates that the Rent Board, in determining individual and general rent adjustments, shall consider all factors "deemed relevant by the Board in providing the landlord a fair return," including but not limited to 11 enumerated factors, one of which is "the landlord's rate of return on investment."

14. On March 27, 1992, plaintiff filed Rent Increase Petition I-1188 with the Rent Board seeking rent adjustments for all residential rental units located on the Property.

15. Pursuant to the individual rent adjustment requirements found at Charter Amendment § 1809(e) and Chapter 4 of the Regulations, plaintiff was required to prove that the Property was producing less than a "fair return" under a comparative Net Operating Income (NOI) analysis that compares the NOI of calendar year 1978 to that of calendar year 1991, the most recent year prior to the filing of Petition I-1188.

16. On April 14, 1992, the Rent Board's Hearing Examiner held an administrative hearing to determine whether plaintiff was entitled to a rent increase.

17. On May 21, 1992, the Hearing Examiner rendered a written decision which found that plaintiff was not entitled to a rent increase.

18. As part of the Rent Increase Petition process, the Hearing Examiner made findings reflected in the decision that plaintiff's operating expenses in the Base Year of 1978 were $14,879.

19. On June 1, 1992, plaintiff appealed the decision of the Hearing Examiner.

20. The Rent Board considered plaintiff's appeal at its weekly public meeting of July 2, 1992. At this meeting the Board rejected plaintiff's arguments and affirmed the Hearing Examiner's decision.

21. Although plaintiff was denied the rent increase sought in Petition I-1188, plaintiff was entitled under the Charter Amendment to implement the full general rent adjustment effective September 1, 1992.

22. While Petition I-1188 was pending before the Board, the Board modified Regulation 4101(c) to separate insurance costs from administrative management costs. There is no provision giving this regulation a retroactive effect.

23. Also while Petition I-1188 was pending, the Board extensively modified Regulation 4108. As originally adopted, Regulation 4108 *temporarily delayed* implementation of general rent adjustments in cases where owners received large rent increases. The revised Regulation 4108, as adopted on June 3, 1992, *permanently denies* up to one year of future general rent adjustments in the event an owner was entitled to *any* rent increase, no matter how small the amount.

24. On March 30, 1993, plaintiff filed a second rent increase petition, Petition I-1299. This petition sought rent increases on the Property based on plaintiff's income and expenses of calendar year 1992.

25. On April 19, 1993, the Rent Board's Hearing Examiner held an administrative hearing to determine whether plaintiff was entitled to a rent increase.

26. On June 19, 1993, the Hearing Examiner rendered a written decision which found that plaintiff was entitled to a permanent rent increase of $3 per unit per month and temporary rent increases averaging $58 per unit per month.

27. On July 12, 1993, plaintiff appealed the Hearing Examiner's decision in Petition I-1299, raising the following objections:

A. Plaintiff objected to the consideration of income from parking spaces rented separately from the Property's apartments, which was not subject to the Rent Board's jurisdiction or authority.

B. Plaintiff objected to the making of factual determinations by the Hearing Examiner that were contrary to determinations made in the Board's previous decision regarding Petition I-1188.

C. Plaintiff objected to the Hearing Examiner's application of Regulation 4108. This Regulation was applied to reduce plaintiff's rent increase entitlement based on 1992 Net

Operating Income and was also applied to permanently deny three-fourths of the general rent adjustment to be implemented in 1993 and 1994.

28. Plaintiff's appeal was considered by the Rent Board at its weekly public meeting of August 12, 1993. At that meeting the Board affirmed the Hearing Examiner's decision and did not accept any of plaintiff's issues raised on appeal.

29. On August 19, 1993, plaintiff presented to the Rent Board a written request for a copy of the administrative record for Petition I-1299 pursuant to Code of Civil Procedure § 1094.6. The Rent Board produced a copy of the record on January 6, 1994, and a copy of that record was lodged with this Court on February 3, 1995.

FIRST CAUSE OF ACTION:
INVERSE CONDEMNATION

30. Plaintiff hereby realleges each and every allegation of Paragraphs 1 through 29 above as if set forth again in full here.

31. Plaintiff contends that the Charter Amendment as applied to plaintiff violates plaintiff's federal and state constitutional rights in that it fails to substantially advance a legitimate governmental interest as required by the Takings Clause of the Fifth Amendment to the United States Constitution and Article I, Section 19, of the California Constitution. *Nollan v. California Coastal Commission*, 483 U.S. 825, 834 (1987). In *Nollan*, 483 U.S. at 834-37, the "substantial advancement" test required property regulations to substantially mitigate some social harm that would otherwise result from the owner's unregulated use of his property. A property regulation can fail the "substantial advancement" test in other ways as well, including the failure in practice to advance the specific purpose stated in the regulation.

32. Because defendant's application of the Charter Amendment has reduced the availability of private rental

housing in Santa Monica and has made it more difficult for low-income renters, young families, and the elderly to find affordable rental housing, the Charter Amendment is not substantially advancing its stated purpose of implementing the housing policies of the city with regard to these population groups.

33. The Rent Board's final determination regarding Petition I-1299 does not substantially advance a legitimate governmental interest, nor is there any close nexus between the denial of plaintiff's application for a fair rate of return on capital investments and any public harm that might result from plaintiff's unregulated operation of the Property, because unregulated use of the Property by plaintiff would not have resulted in the problems allegedly addressed by the Charter Amendment, *i.e.*, a shortage of available housing for low-income renters, young families, and the elderly.

34. Even if regulations substantially advance a legitimate governmental interest, they will still violate the Takings Clause of the Fifth Amendment and Article I, Section 19, of the California Constitution if they deny an owner economically viable use of his property. *Nollan*, 483 U.S. at 834. California courts have consistently applied this standard to rent control, striking down such measures if their impact on property owners is found to be "confiscatory." *See Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 169 (1976).

35. The Rent Board's final determination regarding Petition I-1299 has denied plaintiff a fair return on its investment in capital improvements in violation of state and federal law and the terms of the Charter Amendment itself.

36. The Charter Amendment as applied to the Property has deprived plaintiff of essential attributes of ownership of its private property, including the right to exclude others and the right to determine the terms upon which leasehold interests in plaintiff's Property will be alienated.

37. Plaintiff has received no compensation for the damages inflicted by defendant's application of the Charter Amendment to the Property, and the Charter Amendment contains no provision for seeking or obtaining compensation.

38. For each and all of the foregoing reasons, the Rent Board's application of the Charter Amendment to the Property comprises a regulatory taking of plaintiff's Property for public use without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 19, of the California Constitution.

39. A trial de novo is necessary to examine the constitutional issues in this case. The administrative record compiled by the Rent Board is inadequate for this purpose because the Rent Board does not conduct the kind of judicial proceedings needed to safeguard plaintiff's fundamental right to due process of law or its right not to be deprived of its property without just compensation. *Healing v. California Coastal Commission*, 22 Cal. App. 4th 1158, 1174 (1994).

40. Plaintiff does not have a plain, speedy, or adequate remedy in the ordinary course of the law other than the relief requested herein. Plaintiff has exhausted all administrative remedies required by law; this action is ripe for adjudication and is timely filed.

WHEREFORE, plaintiff prays for judgment as hereinafter set forth.

SECOND CAUSE OF ACTION:
ADMINISTRATIVE MANDAMUS

41. Plaintiff hereby realleges each and every allegation of Paragraphs 1 through 40 above as if set forth again in full here.

REGULATORY TAKING

42. The Rent Board's final determination regarding Petition I-1299 is invalid under Code of Civil Procedure

§ 1094.5 in that the Rent Board proceeded in excess of or without jurisdiction or lawful authority.

43. The Rent Board has proceeded without lawful authority in this matter in that its actions and deliberations were taken pursuant to an unconstitutional enactment. The Charter Amendment has depleted the stock of affordable housing in Santa Monica and imposed special hardships on low-income renters, young families, and the elderly in contravention of its stated purposes. For this reason, the Charter Amendment does not substantially advance a legitimate governmental interest and is therefore invalid as a regulatory taking of private property without just compensation in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 19, of the California Constitution. The Rent Board is without lawful authority to apply this unconstitutional ordinance to plaintiff or its property.

44. The Rent Board's decision herein affected plaintiff's fundamental vested constitutional right not to have its property taken for public use without just compensation. Plaintiff is therefore entitled to de novo review of the evidence before the Rent Board and any additional evidence submitted on the regulatory takings claim, as provided in *Hensler v. City of Glendale*, 8 Cal. 4th 1, 16 (1994).

PARKING REVENUES

45. The Charter Amendment does not grant the Board authority to regulate any income except rent received from controlled rental housing units. By including plaintiff's 1992 parking revenues in its gross income calculations, the Board wrongfully understated plaintiff's rent increase entitlement. Consequently, the Rent Board's final decision regarding Petition I-1299 is invalid under Code of Civil Procedure § 1094.5 in that the Board proceeded in excess of or without jurisdiction or lawful authority.

PREVIOUS FINDINGS OF FACT

46. The Rent Board has no jurisdiction or authority to change findings made in previous final Board decisions. By failing to follow the determinations made in case I-1188, the Board added unclaimed and unproven insurance expenses to its computation of plaintiff's 1978 operating costs in case I-1299.

REGULATION 4108

47. Application of Regulation 4108 by the Rent Board can only lead to arbitrary and capricious results for the following reasons.

48. Regulation 4108 is in direct conflict with all other provisions of the "fair return" rent increase process adopted by the Board. Rent Control Regulations 4100 through 4106 require that 1978 "Base Year" NOI be increased at 40% of the change in the inflation rate as of the date of filing the petition. The Rent Board's application of Regulation 4108, however, reduces the resulting rent increase entitlement by using *future* potential income to reduce plaintiff's entitlement for the *past* year.

49. The Rent Board's application of Regulation 4108 is in conflict with Rent Control Regulation 4101. Regulation 4101 requires that gross income be calculated at 100% paid occupancy and does not allow future revenue projections to inflate the current year's income.

50. The Rent Board's application of Regulation 4108 effects the sort of "income analyzing" that was rejected by the Court of Appeal in *Abramson v. City of West Hollywood*, 7 Cal. App. 4th 1121 (1992).

51. The Rent Board's application of Regulation 4108 is in conflict with general accounting principles which require that income and expenses be matched over the same period of time.

52. The Rent Board's application of Regulation 4108 leads to absurd results in that, if the Board determines that an

individual rent increase is required in order to maintain a "fair return," it then applies Regulation 4108 to disallow part or all of the general rent adjustment for the following year.

53. Regulation 4108 constitutes a penalty on owners who file rent increase petitions. Owners are better off not filing a petition than proving an entitlement to a modest rent increase. Had plaintiff not filed Petition I-1299, plaintiff would have been entitled to a general rent adjustment in September, 1993, of $20 per unit per month in permanent rent increases. However, because plaintiff proved an entitlement to a permanent rent increase of $3 per unit per month, three-fourths of the general rent adjustment was disallowed. Thus the Rent Board deprived plaintiff of a $15 general rent increase as the "price" of granting plaintiff a $3 individual rent increase.

54. Regulation 4108 is based on the false premise that owners file a rent increase petition because they elect to receive an individual adjustment *rather than* accept the general adjustment to which they are entitled. In fact, no rational owner would seek to prove that he or she was receiving less than a fair return in 1992 if that determination would mean forfeiting the general rent adjustment for 1993.

55. Plaintiff does not have a plain, speedy, or adequate remedy in the ordinary course of the law other than the relief requested herein. Plaintiff has exhausted all administrative remedies required by law; this action is ripe for adjudication and timely filed.

WHEREFORE, plaintiff prays for judgment as hereinafter set forth below.

PRAYER FOR RELIEF

Based upon the allegations above, plaintiff Santa Monica Beach, Ltd., prays for judgment against defendant Santa Monica Rent Control Board as follows:

1. for an order declaring that the Santa Monica Rent Control Charter Amendment, as applied to plaintiff, comprises a regulatory taking of property in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 19, of the California Constitution; and for an order awarding just compensation, in an amount to be ascertained at trial, for the temporary taking of plaintiff's property from August 12, 1993, to such future date as the Rent Board ceases enforcing the provisions of the Charter Amendment against plaintiff;

2. for a writ of administrative mandate pursuant to Code of Civil Procedure § 1094.5, compelling the Santa Monica Rent Control Board to set aside the final determination of Petition I-1299 in its entirety because said determination exceeds the Rent Board's authority and violates plaintiff's rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Sections 7 and 19, of the California Constitution; or

3. in the alternative, for a writ of administrative mandate pursuant to Code of Civil Procedure § 1094.5 compelling the Santa Monica Rent Control Board to set aside those portions of its final determination of Petition I-1299 which (1) exceed the Board's jurisdiction or authority, (2) include plaintiff's parking revenues as part of Net Operating Income, (3) incorporate findings in conflict with the Board's final determination of Petition I-1188; or (4) result from the Board's application of Regulation 4108; and to enter a new decision which makes just and reasonable determinations of the amount of rent increases to which plaintiff is entitled under Regulations 4100 through 4106;

4. for costs of suit including reasonable attorneys' fees; and

5. for such other and further relief as the Court may deem proper.

DATED: May 12, 1995.

Respectfully submitted,

JAMES S. BURLING
R. S. RADFORD
NATHAN D. SCHMIDT

By /s/ NATHAN D. SCHMIDT
NATHAN D. SCHMIDT

Attorneys for Petitioner
and Plaintiff

VERIFICATION

I, Carl J. Lambert, declare:

I am President of Lambert Investments, Inc., the Corporate General Partner of Santa Monica Beach Limited, petitioner and plaintiff in this action. I have read the affixed complaint for inverse condemnation and petition for writ of administrative mandate and know its contents and verify the same to be true of my own knowledge with the exception of Paragraphs 6 through 11, which I verify to be true on information and belief.

I declare under penalty of perjury that the foregoing is true and that this verification was executed on this 11th day of May, 1995, at Santa Monica, California.

/s/ CARL J. LAMBERT
CARL J. LAMBERT
Santa Monica Beach, Ltd.

APPENDIX F

Appendix F-1

RENT CONTROL CHARTER AMENDMENT

Article XVIII Is enacted as follows:

ARTICLE XVIII. RENT CONTROL

1800. Statement of Purpose

A growing shortage of housing units resulting in a low vacancy rate and rapidly rising rents exploiting this shortage constitute a serious housing problem affecting the lives of a substantial portion of those Santa Monica residents who reside in residential housing. In addition, speculation in the purchase and sale of existing residential housing units results in further rent increases. These conditions endanger the public health and welfare of Santa Monica tenants, especially the poor, minorities, students, young families, and senior citizens. The purpose of this Article, therefore, is to alleviate the hardship caused by this serious housing shortage by establishing a Rent Control Board empowered to regulate rentals in the City of Santa Monica so that rents will not be increased unreasonably and so that landlords will receive no more than a fair return.

In order to accomplish this purpose, this Article provides for an elected Rent Control Board to ensure that rents are at a fair level by requiring landlords to justify any rents in excess of the rents in effect one year prior to the adoption of this Article. Tenants may seek rent reductions from the rent in effect one year prior to the adoption of this Article by establishing that those rents are excessive. In addition to giving tenants an opportunity to contest any rent increase, this Article attempts to provide reasonable protection to tenants by controlling removal of controlled rental units from the housing market and by requiring just cause for any eviction from a controlled rental unit.

Through this Article, the city exercises its police power in order to address the serious housing problem recognized in the original

enactment of this Rent Control Law in 1979 and still existing in 1984. The 1984 Amendment to the Rent Control Law is intended to clarify the law and ensure that the Rent Control Board possesses adequate and independent authority to carry out its duties. It is intended to ensure due process of law for landlords and tenants, effective remedies for violation of the law, and consistency with constitutional requirements. It is also intended to enable the Board to provide relief to persons facing particular hardship and to protect and increase the supply of affordable housing in the city. Termination or erosion of the protections of this Article would have serious disruptive consequences for persons in need of protection and the supply of affordable housing in the city.

1801. Definitions

The following words or phrases as used in this Article shall have the following meanings:

(a) BOARD: The term "Board" refers to the elected Rent Control Board established by this Article.

(b) COMMISSIONERS: The members of the Board and Interim Board are denominated Commissioners.

(c) CONTROLLED RENTAL UNITS: All residential rental units in the City of Santa Monica, including mobile homes, and mobile home spaces, and trailers and trailer spaces, except single family homes to the extent provided for in section 1815 and those units found by the Board to be exempt under one or more of the following provisions:

(1) Rental units in hotels, motels, inns, tourist homes and rooming and boarding houses which are rented primarily to transient guests for a period of less than fourteen (14) days.

(2) Rental units in any hospital, convent, monastery, extended medical care facility, asylum, non-profit

home for the aged, or dormitory owned and operated by an institution of higher education.

(3) Rental units which a government unit, agency or authority owns, operates, manages, or in which governmentally subsidized tenants reside only if applicable federal or state law or administrative regulation specially exempt such units from municipal rent control.

(4) Rental units in owner-occupied dwellings with no more than three (3) units. For purposes of this section:

(i) The term "owner" means a natural person who owns a fifty (50) percent ownership interest in the building and resides on the property as his or her principal place of residence.

(ii) An exemption under this section shall expire by operation of law when the owner ceases to reside on the property as his or her principal place of residence; thereafter, all units on the property shall be subject to all provisions of this Article.

(5) Rental units and dwellings constructed after the adoption of this Article; this exemption does not apply to units created as a result of conversion as opposed to new construction.

(6) Where a unit is actually used for purposes of providing, on a non-profit basis, child care or other residential social services in accordance with applicable laws. This exemption shall expire when the use upon which exemption is based ceases. This exemption shall only apply to units as they become vacant and shall only operate to allow the specified use without the necessity of obtaining a removal permit under this Article. This exemption shall not

be construed to authorize the eviction of any tenant nor to authorize the charging of rent in excess of that permitted under this Article. The Board may adopt regulations to determine whether a unit qualifies for an exemption under this section.

(7) Exemptions are not automatic but shall be granted by the Board upon application by the owner pursuant to Board rules, provided that if the Board does not act upon a completed application for exemption within ninety (90) days of its filing it shall be deemed approved.

(d) HOUSING SERVICE: Housing services include, but are not limited to repairs, maintenance, painting, providing light, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishings, telephone, parking, and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

(e) LANDLORD: An owner, lessor, sublessor or any other person entitled to receive rent for the use and occupancy of any rental unit, or an agent, representative or successor of any of the foregoing.

(f) RENT: All periodic payments and all nonmonetary consideration including but not limited to, the fair market value of goods or services rendered to or for the benefit of the landlord under an agreement concerning the use or occupancy of a rental unit and premises including all payment and consideration demanded or paid for parking, pets, furniture, subletting and security deposits for damages and cleaning.

(g) RENTAL HOUSING AGREEMENT: An agreement, oral, written or implied, between a landlord and tenant for use or occupancy of a rental unit and for housing services.

(h) RENTAL UNITS: Any building, structure, or part thereof, or land appurtenant thereto, or any other rental property rented or offered for rent for living or dwelling house units, together with all housing services connected with use or occupancy of such property such as common areas and recreational facilities held out for use by the tenant.

(i) TENANT: A tenant, subtenant, lessee, sublessee or any other person entitled under the terms of a rental housing agreement to the use or occupancy of any rental unit.

(j) RECOGNIZED TENANT ORGANIZATION: Any group of tenants residing in controlled rental units in the same building or in different buildings operated by the same management company, agent or landlord, who requests to be so designated.

(k) RENT CEILING: Rent ceiling refers to the limit on the maximum allowable rent which a landlord may charge on any controlled rental unit.

(l) BASE RENT CEILING: The maximum allowable rent established in Section 1804(b).

(m) PROPERTY: All rental units on a parcel or lot or contiguous parcels or contiguous lots under common ownership.

(n) SINGLE FAMILY HOME: A property that has been developed with only one one-family dwelling and any lawful accessory structures, or a lawfully created condominium, stock cooperative or similar unit that is part of a larger residential structure or complex, excepting those condominiums, stock cooperatives, or similar units converted after April 10, 1979 for which no removal permit

or vested right determination has been issued by the Board, and those created pursuant to Article XX of this Chapter.

1802. Integrity and Autonomy of Board

The Rent Control Board shall be an integral part of the government of the city, but shall exercise its powers and duties under this Article independent of and without interference from the City Council, City Manager, and City Attorney. With respect to the internal organization and affairs of the Board:

(a) BUDGET: The Board shall, prior to July 1 of each year, hold a public hearing on a proposed budget and adopt an annual budget for the ensuing fiscal year. At least thirty-five days prior to the beginning of each fiscal year, the Board's Administrator shall submit to the Board the proposed budget as prepared by him or her. After reviewing the same and making such revisions as it may deem advisable, the Board shall determine the time for the holding of a public hearing thereon and shall cause to be published a notice thereof not less than ten days prior to said hearing, by at least one insertion in the official newspaper. Copies of the proposed budget shall be available for inspection by the public in the office of the Board at least ten days prior to said hearing. The City Council and the City Manager shall have no authority to oversee, supervise, or approve this budget. Upon final adoption, the budget shall be in effect for the ensuing fiscal year and the amounts stated therein shall be and become appropriated by the Board for the respective objects and purposes therein specified. At any meeting after the adoption of the budget the Board may amend or supplement the budget by the affirmative votes of at least three members. Copies of the adopted budget and any amendments or supplements shall be filed with the City Clerk, City Controller, and City Manager. Necessary adjustments to city administrative procedures shall be made.

(b) PERSONNEL: Except for the elected or appointed Commissioners, the Administrator, and attorneys employed to represent or advise the Board, all employees of the Board are within the classified civil service of the City. The Board shall appoint an administrator to administer and supervise the exercise of its powers and duties who shall be directly responsible to the Board. All employees of the Board, except the Administrator and attorneys, shall be hired, terminated, suspended, and demoted in accordance with the provisions of Article XI of the Charter and implementing provisions of the Municipal Code. The Board shall classify employee positions, establish employee salaries and benefits, evaluate the performance of its employees, and be responsible for the layoff and recall of its employees, pursuant to regulations and procedures that it establishes. The Board may enter into and approve a Memorandum of Understanding with representatives of its employees concerning their wages, benefits, hours of work, and terms and conditions of employment in accordance with state law. The City Council shall have no power to abolish positions established or classified by the Board under this Article, notwithstanding any other section of this Charter. Provisions of the Municipal Code and other ordinances or resolutions of the City Council shall not limit the Board's power to adopt regulations and policies and to approve Memorandums of Understanding governing its relationship with its employees under this Section.

(c) BOARD LEGAL WORK: Legal staff hired by the Board shall represent and advise the Board, its Commissioners, and its staff in any civil matters, actions, or proceedings in which the Board, its Commissioners, or its staff, in or by reason of their official capacity, are concerned or are a party. The Board may, in its sole discretion, and without approval of the City Council, retain private attorneys to furnish legal advice or representation in particular matters, actions or proceedings.

(d) CONTRACTS AND PURCHASES: The Board shall comply with the provisions of the City Charter providing for a centralized purchasing system and competitive bidding, and shall procure goods and services as do other City agencies. Provided, however, that the Board shall have sole and final authority to employ attorneys, legislative lobbyists, and other professionals, and to approve contracts for such professional services.

(e) CONFORMING REGULATIONS: If any portion of this Article is declared invalid or unenforceable by decision of a court of competent jurisdiction or rendered invalid or unenforceable by state or federal legislation, the Board and not the City Council shall have authority to enact replacement regulations consistent with the intent and purpose of the invalidated provision and applicable law. Such replacement regulations shall supersede invalidated or unenforceable provisions of this Article to the extent necessary to resolve any inconsistency. The subject matter of such replacement regulations shall be limited to rent control matters as enumerated in this Article.

1803. Permanent Rent Control Board

(a) COMPOSITION: There shall be in the City of Santa Monica a Rent Control Board. The Board shall consist of five elected Commissioners. The Board shall elect annually as chairperson, one of its members to serve in that capacity.

(b) ELIGIBILITY: Duly qualified electors of the City of Santa Monica are eligible to serve as Commissioners of the Board.

(c) FULL DISCLOSURE OF HOLDINGS: Candidates for the position of Commissioner shall submit a verified statement listing all of their interests and dealings in real property, including but not limited to its ownership, sale or management, during the previous three (3) years.

(d) ELECTION OF COMMISSIONERS: Commissioners shall be elected at general municipal elections in the same manner as set forth in Article XIV of the Santa Monica Charter, except that the first Commissioners shall be elected at a special municipal election held within ninety (90) days of the adoption of this Article. The elected Commissioners shall take office on the first Tuesday following their election.

(e) TERM OF OFFICE: Commissioners shall be elected to serve terms of four years, beginning on the first Tuesday following their election, except that of the first five Commissioners elected in accordance with Section 1803(d), the two Commissioners receiving the most votes shall serve until April 15, 1985 and the remaining three Commissioners shall serve until April 18, 1983. Commissioners shall serve a maximum of two full terms.

(f) POWERS AND DUTIES: The Board shall have the following powers and duties:

(1) Set the rent ceilings for all controlled rental units.

(2) Require registration of all controlled rental units under Section 1803(q).

(3) Establish a base rent ceiling on rents under Section 1804(b).

(4) To make adjustments in the rent ceiling in accordance with Section 1805.

(5) Set rents at fair and equitable levels in order to achieve the intent of this Article.

(6) Hire and pay necessary staff including hearing examiners and personnel to issue orders, rules and regulations, conduct hearings and charge fees as set forth below.

(7) Make such studies, surveys and investigations, conduct such hearings, and obtain such information as is necessary to carry out its powers and duties.

(8) Report annually to the City Council of the City of Santa Monica on the status of controlled rental housing.

(9) Remove rent controls under Section 1803(r).

(10) Issue permits for removal of controlled rental units from rental housing market under Section 1803(t).

(11) Administer oaths and affirmations and subpoena witnesses.

(12) Establish rules and regulations for deducting penalties and settling civil claims under Section 1809.

(13) Refer violations of this Article to appropriate authorities for criminal prosecution.

(14) Seek injunctive and other civil relief under Section 1811.

(15) Charge and collect registration fees, including penalties for late payments.

(g) RULES AND REGULATIONS: The Board shall issue and follow such rules and regulations, including those which are contained in this Article, as will further the purposes of the Article. The Board shall publicize its rules and regulations prior to promulgation in at least one newspaper of general circulation in the City of Santa Monica The Board shall hold at least one (1) public hearing to consider the views of interested parties prior to be adoption of general adjustments of the decision to decontrol or reimpose control for any class of rental units under Section 1803(r). All rules and regulations, internal staff memoranda, and written correspondence explaining the decisions, orders, and policies of the Board shall be kept in the Board's office and

shall be available to the public for inspection and copying. The Board shall publicize this Article so that all residents of Santa Monica will have the opportunity to become informed about their legal rights and duties under Rent Control in Santa Monica. The Board shall prepare a brochure which fully describes the legal rights and duties of landlords and tenants under Rent Control in Santa Monica. The brochure will be available to the public and each tenant of a controlled rental unit shall receive a copy of the brochure from his or her landlord.

(h) MEETINGS: The Board shall hold such regularly scheduled meetings as are necessary to ensure the timely performance of its duties under this Article. All regular and special meetings shall be called and conducted in accordance with state law.

(i) QUORUM: Three Commissioners shall constitute a quorum for the Board.

(j) VOTING: The affirmative vote of three Commissioners of the Board is required for a decision, including all motions, regulations, and orders of the Board.

(k) COMPENSATION: Each Commissioner shall receive for every meeting attended seventy-five dollars ($75.00), but in no event shall any Commissioner receive in any twelve month period more than forty-seven hundred and fifty dollars ($4,750) for services rendered.

(l) DOCKETS: The Board shall maintain and keep in its office all hearing dockets.

(m) VACANCIES: If a vacancy shall occur on the Board, the Board shall within thirty (30) days appoint a qualified person to fill such a vacancy until the following municipal election when a qualified person shall be elected to serve for the remainder of the term.

(n) FINANCING: The Board shall finance its reasonable and necessary expenses by charging landlords annual registration fees in amounts deemed reasonable by the Board. The Board may direct that all or part of such fees may be passed through from landlords to tenants and may establish applicable conditions and procedures. The Board is also empowered to request and receive funding when and if necessary from any available source for its reasonable and necessary expenses.

(o) RECALL: Commissioners may be recalled in accordance with the provisions of Article XIV of the Santa Monica Charter.

(p) STAFF: The Board shall employ and pay such staff, including hearing examiners and inspectors, as may be necessary to perform its function efficiently in order to fulfill the purpose of this Article.

(q) REGISTRATION: Within sixty (60) days after the adoption of this Article, the Board shall require the registration of all controlled rental units, which shall be re-registered at times deemed appropriate by the Board. The initial registration shall include the rent in effect at the time on the date of the adoption of this Article, base rent ceiling, the address of the rental unit, the name and address of the landlord, the housing services provided to the unit, a statement indicating all operating cost increases since the base rent ceiling date, and any other information deemed relevant by the Board. The Board shall require the landlord to report vacancies in the controlled rental units and shall make a list of vacant controlled rental units available to the public. If the Board, after the landlord has proper notice and after a hearing, determines that a landlord has wilfully and knowingly failed to register a controlled rental unit, the Board may authorize the tenant of such a non-registered controlled rental unit to withhold all or a portion of the rent for the unit until such time as the rental unit is properly

registered. After a rental unit is properly registered, the Board shall determine what portion, if any, of the withheld rent is owed to the landlord for the period in which the rental unit was not properly registered. Whether or not the Board allows such withholding, no landlord who has failed to register properly shall at any time increase rents for a controlled rental unit until such units are properly registered.

(r) DECONTROL: If the average annual vacancy rate in any category, classification, or area of controlled rental units exceeds five (5) percent, the Board is empowered, at its discretion and in order to achieve the objectives of this Article, to remove rent controls from such category, classification or area. The Board may determine such categories, classifications, or areas for purposes of decontrol consistent with the objectives of this Article. In determining the vacancy rate for any category, classification or area of controlled rental units, the Board shall consider all available data and shall conduct its own survey. If units are decontrolled pursuant to this subsection, controls shall be reimposed if the Board finds that the average annual vacancy rate has thereafter fallen below five (5) percent for such category, classification or area.

(s) SECURITY DEPOSITS: Any payment or deposit of money the primary function of which is to secure the performance of a rental agreement or any part of such agreement, including an advance payment of rent, shall be placed in an interest bearing account at a federally insured financial institution until such time as it is returned to the tenant or entitled to be used by the landlord. Unless and until the Board enacts regulations directing that the interest on such accounts be paid directly to the tenant, the landlord may either pay such interest directly to the tenant or use it to offset operating expenses, in which case the offset shall be a factor in making individual rent adjustments under

Section 1805. The Board may regulate the amount and use of security deposits consistent with the purposes of this Article and state law.

(t) REMOVAL OF CONTROLLED UNIT FROM RENTAL HOUSING MARKET:

(1) Any landlord who desires to remove a controlled rental unit from the rental housing market by demolition, conversion or other means is required to obtain a permit from the Board prior to such removal from the rental housing market in accordance with rules and regulations promulgated by the Board. In order to approve such a permit, the Board is required to find that the landlord cannot make a fair return by retaining the controlled rental unit.

(2) Notwithstanding the foregoing provisions of this subsection, the Board may approve such a permit:

(i) If the Board finds that the controlled rental unit is uninhabitable and is incapable of being made habitable in an economically feasible manner, or

(ii) If the permit is being sought so that the property may be developed with multifamily dwelling units and the permit applicant agrees as a condition of approval, that the units will not be exempt from the provisions of this Article pursuant to Section 1801(c) and that at least fifteen (15) percent of the controlled rental units to be built on the site will be at rents affordable by persons of low income.

(3) The Housing Element of the General Plan of the City of Santa Monica shall at all times contain a provision that neither the City Council nor any City agency shall approve an application for tentative subdivision map or tentative parcel map for a converted unit until and

unless the applicant first obtains a removal permit as required by this Section. This subsection shall not apply to any tentative subdivision map or tentative parcel map approved in accordance with Article XX relating to tenant ownership rights.

(4) The Board shall render its final decision within one hundred and twenty (120) days of the filing of a completed application under this section.

1804. Maximum Allowable Rents

(a) TEMPORARY FREEZE: Rents shall not be increased during the one hundred-twenty (120) day period following the date of adoption of this Article.

(b) ESTABLISHMENT OF BASE RENT CEILING: Beginning one-hundred-twenty (120) days after the adoption of this Article, no landlord shall charge rent for any controlled rental units in an amount greater than the rent in effect on the date one year prior to the adoption of this Article. The rent in effect on that date is the base rent ceiling and is a reference point from which fair rents shall be adjusted upward or downward in accordance with Section 1805. If there was no rent in effect on the date one year prior to the adoption of this Article, the base rent ceiling shall be the rent that was charged on the first date that rent was charged following the date one year prior to the adoption of this Article.

(c) POSTING: As soon as the landlord is aware of the maximum allowable rent, the landlord shall post it for each unit in a prominent place in or about the affected controlled rental units. The Board may require that other information it deems relevant also be posted.

1805. Individual and General Adjustment of Ceilings on Allowable Rents

(a) GENERAL ADJUSTMENT: The Board may, after holding those public hearings prescribed by Section 1803(g), set and adjust upward or downward the rent ceiling for all controlled rental units in general and/or for particular categories of controlled rental units deemed appropriate by the Board. Such an adjustment, however, need not take effect immediately, and the Board may decide that new rent ceilings shall not take effect until some reasonable date after the above-stated time periods.

(b) ANNUAL GENERAL ADJUSTMENT: Each year the Board shall generally adjust rents as follows:

(1) Adjust rents upward by granting landlords a utility and tax increase adjustment for actual increases in the City of Santa Monica for taxes and utilities.

(2) Adjust rents upward by granting landlords a maintenance increase adjustment for actual increases in the City of Santa Monica for maintenance expenses.

(3) Adjust rents downward by requiring landlords to decrease rents for any actual decreases in the City of Santa Monica for taxes.

In adjusting rents under this subsection, the Board shall adopt a formula of general application.

(c) PETITIONS: Upon receipt of a petition by a landlord and/or a tenant, the maximum rent of individual controlled rental units may be adjusted upward or downward in accordance with the procedures set forth elsewhere in this Section. The petition shall be on the form provided by the Board and shall include a declaration by the landlord that the unit meets all requirements of Section 1805(h). Notwithstanding any other provision of this Section, the

Board or hearing examiner may refuse to hold a hearing and/or grant a rent adjustment if an individual hearing has been held and decision made with regard to maximum rent within the previous six months.

(d) HEARING PROCEDURE: The Board shall enact rules and regulations governing hearings and appeals of individual adjustment of ceilings on allowable rents which shall include the following:

(1) HEARING EXAMINER: A hearing examiner appointed by the Board shall conduct a hearing to act upon the petition for individual adjustment of ceilings on allowable rents and shall have the power to administer oaths and affirmations.

(2) NOTICE: The Board shall notify the landlord if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such a petition and a copy thereof.

(3) TIME OF HEARING: The hearing officer shall notify all parties, as to the time, date and place of the hearing.

(4) RECORDS: The hearing examiner may require either party to a rent adjustment hearing to provide it with any books, records and papers deemed pertinent in addition to that information contained in registration statements. The hearing examiner shall conduct a current building inspection and/or request the city to conduct a current building inspection if the hearing examiner finds good cause to believe the Board's current information does not reflect the current condition of the controlled rental unit. The tenant may request the hearing examiner to order such an inspection prior to the date of the hearing. All documents required under this Section shall be made available to the parties involved prior to the hearing at

the office of the Board. In cases where information filed in a petition for rent ceiling adjustment or in additional submissions filed at the request of the hearing examiner is inadequate or false, no action shall be taken on said petition until the deficiency is remedied.

(5) OPEN HEARINGS: All rent ceiling adjustment hearings shall be open to the public.

(6) RIGHT OF ASSISTANCE: All parties to a hearing may have assistance in presenting evidence and developing their position from attorneys, legal workers, recognized tenant organization representatives or any other persons designated by said parties.

(7) HEARING RECORD: The Board shall make available for inspection and copying by any person an official record which shall constitute the exclusive record for decision on the issues at the hearing. The record of the hearing, or any part of one, shall be obtainable for the cost of copying. The record of the hearing shall include: all exhibits, papers and documents required to be filed or accepted into evidence during the proceedings; a list of participants present; a summary of all testimony accepted in the proceedings; a statement of all materials officially noticed; all recommended decisions; orders and/or rulings; all final decisions, orders and/or rulings, and the reasons for each final decision, order and/or ruling. Any party may have the proceeding tape recorded or otherwise transcribed at his or her own expense.

(8) QUANTUM OF PROOF AND NOTICE OF DECISION: No individual adjustment shall be granted unless supported by the preponderance of the evidence submitted at the hearing. All parties to a

hearing shall be sent a notice of the decision and a copy of the findings of fact and law upon which said decision is based. At the same time, parties to the proceeding shall also be notified of their right to any appeal allowed by the Board and/or to judicial review of the decision pursuant to this Section and Section 1808 of this Article.

(9) CONSOLIDATION: All landlord petitions pertaining to tenants in the same building will be consolidated for hearing, and all petitions filed by tenants occupying the same building shall be consolidated for hearing unless there is a showing of good cause not to consolidate such petitions.

(10) APPEAL: Any person aggrieved by the decision of the hearing examiner may appeal to the Board. On appeal, the Board shall affirm, reverse or modify the decision of the hearing examiner. The Board may conduct a de novo hearing or may act on the basis of the record before the hearing examiner without holding a hearing.

(11) FINALITY OF DECISION: The decision of the hearing examiner shall be the final decision of the Board in the event of no appeal to the Board. The decision of the hearing examiner shall not be stayed pending appeal; however, in the event that the Board on appeal reverses or modifies the decision of the hearing examiner, the landlord, in the case of an upward adjustment in rent, or the tenant, in the case of a downward adjustment of rent, shall be ordered to make retroactive payments to restore the parties to the position they would have occupied had the hearing examiners decision been the same as that of the Board.

(12) TIME FOR DECISION: The rules and regulations adopted by the Board shall provide for final action on any individual rent adjustment petition within one-hundred and twenty (120) days, following the date of filing of the individual rent adjustment petition.

(13) BOARD ACTION IN LIEU OF REFERENCE TO HEARING EXAMINER: The Board, on its own motion or on the request of any landlord or tenant, may hold a hearing on an individual petition for rent adjustment without the petition first being heard by a hearing examiner.

(14) Decisions decreasing rents shall remain in effect until the Board finds that the landlord has corrected the defect warranting the decrease. The Board shall, by regulation, establish procedures for making prompt compliance determinations. Upon a determination of compliance the landlord shall be entitled to reinstatement of the prior rent level, retroactive to the date that the landlord corrected the defect which warranted the decrease.

(e) In making individual and general adjustments of the rent ceiling, the Board shall consider the purposes of this Article and the requirements of law. The Board may adopt as its fair return standard any lawful formula, including but not limited to one based on investment or net operating income. The Board shall consider all factors relevant to the formula it employs; such factors may include: increases or decreases in operating and maintenance expenses, the extent of utilities paid by the landlord, necessary and reasonable capital improvement of the controlled rental unit as distinguished from normal repair, replacement and maintenance, increases or decreases in living space, furniture, furnishings, equipment, or services, substantial deterioration of the controlled rental unit other than as a

result of ordinary wear and tear, failure on the part of the landlord to provide adequate housing services or to comply substantially with applicable housing, health and safety codes, federal and state income tax benefits, the speculative nature of the investment, whether or not the property was acquired or is held as a long term or short term investment, the landlord's rate of return on investment, the landlord's current and base date Net Operating Income, and any other factor deemed relevant by the Board in providing the landlord a fair return.

(f) No rent increase shall be authorized by this Article because a landlord has a negative cash flow as the result of refinancing the controlled rental unit if at the time the landlord refinanced the landlord could reasonably have foreseen a negative cash flow based on the rent schedule then in existence within the one year period following refinancing. This paragraph shall only apply to that portion of the negative cash flow reasonably foreseeable within the one year period following refinancing of the controlled rental unit and shall only apply to controlled rental units refinanced after the date of adoption of this Article.

(g) No rent increase shall be authorized by this Article because a landlord has a negative cash flow if at the time the landlord acquired the controlled rental unit, the landlord could reasonably have foreseen a negative cash flow based on the rent schedule then in existence within the one year period following acquisition. This paragraph shall only apply to that portion of the negative cash flow reasonably foreseeable within the one year period following acquisition of a controlled rental unit and shall only apply to controlled rental units acquired after the date of adoption of this Article.

(h) No landlord shall increase rent under this Article if the landlord:

(1) Has failed to comply with any provisions of this Article and/or regulations issued thereunder by the Board, including the provisions requiring the payment of registration fees and registration penalties.

(2) Has failed to comply substantially with any applicable state or local housing, health or safety law. No landlord shall increase rent unless the notice increasing rent contains a statement in substantially the following form: "The undersigned (landlord) certifies that this unit and common areas are not subject to any uncorrected citation or notices of violation of any state or local housing health, or safety laws issued by any government official or agency." If a landlord fails to comply with this subsection, the tenant may refuse to pay the improperly noticed increase, may seek administrative or civil remedies under this Article, and may raise the landlords noncompliance as an affirmative defense in any resulting unlawful detainer action.

(i) The Board may, in its discretion, enact regulations to provide for increases of rents on units voluntarily vacated after the effective date of this subsection in properties where the landlord has dedicated a percentage of units to be rented to persons of very low or low income at affordable rents. The Board may enact procedures and other regulations governing determination of the conditions upon which such increases will be permitted, the extent of the increases, the required mix of affordable units to be provided, ways to ensure the continued provision of affordable housing under this subsection, the terms and conditions applicable when landlords cease to participate or when tenants vacate or cease to qualify for units dedicated to affordable housing, and other measures it deems necessary.

If the Board enacts regulations under this subsection, it shall provide for the following:

(1) That a property shall not be eligible for this program unless a specified percentage of all units on the property, no less than fifteen (15) percent, will be occupied by tenants of very low or low income and the rent on each unit so occupied does not exceed a specified percentage, no greater than thirty (30) percent, of such tenants' income.

(2) That tenants of very low or low income occupying units maintained at affordable rent levels under this program are protected if the landlord elects not to participate further in the program. Such protection shall include, at a minimum, a provision prohibiting the rent of such tenants from being increased by a percentage greater than the general annual adjustment allowed by the Board even if the resulting rent is below the maximum affordable rent and the landlord has lowered the rent for other units on the property.

1806. Eviction

No landlord shall take action to terminate any tenancy including service of any notice to quit or other eviction notice or bring any action to recover possession or be granted recovery of possession of a controlled rental unit unless:

(a) The tenant has failed to pay the rent to which the landlord is entitled under the rental housing agreement and this Article.

(b) The tenant has violated an obligation or covenant of his or her tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation after having received written notice thereof from the landlord in the manner required by law.

(c) The tenant is committing or expressly permitting a nuisance in, or is causing substantial damage to the controlled rental unit, or is creating a substantial interference with the comfort, safety, or enjoyment of the landlord or other occupants or neighbors of the same.

(d) The tenant is convicted of using or expressly permitting a controlled rental unit to be used for any illegal purpose.

(e) The tenant, who had a rental housing agreement which had terminated, has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and in such terms as are not inconsistent with or violative of any provisions of this Article and are materially the same as in the previous agreement.

(f) The tenant has refused the landlord reasonable access to the controlled rental unit for the purposes of making necessary repairs or improvements required by the laws of the United States, the State of California or any subdivision thereof, or for the purpose of showing the rental housing to any prospective purchaser or mortgagee.

(g) The tenant holding at the end of the term of the rental housing agreement is a subtenant not approved by the landlord.

(h) The landlord seeks to recover possession in good faith for use and occupancy by herself or himself, or her or his children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(1) A "landlord" shall be defined as a natural person who has at least a fifty (50) percent ownership interest in the property.

(2) No eviction may take place if any landlord or enumerated relative already occupies one unit on the property, or if a vacancy already exists on the

property and the vacant unit is comparable to the unit for which eviction is sought. Where the vacant unit is determined not to be comparable, thereby permitting eviction under this subsection, the evicted tenant or tenants shall be first given the right to occupy the vacant unit and the rent thereof shall be the lesser of the maximum allowable rent for the vacant unit and the maximum allowable rent of the unit from which the tenant or tenants are evicted. The Rent Control Board shall promulgate regulations defining when a unit is comparable for purposes of this paragraph.

(3) The notice terminating tenancy shall contain the name, address and relationship to the landlord of the person intended to occupy.

(4) The landlord or enumerated relative must intend in good faith to move into the unit within thirty (30) days after the tenant vacates and to occupy the unit as a primary residence for at least one year. The Board may adopt regulations governing the determination of good faith.

(5) If the landlord or relative specified on the notice terminating tenancy fails to occupy the unit within thirty (30) days after the tenant vacates, the landlord shall:

(i) Offer the unit to the tenant who vacated it.

(ii) Pay to said tenant all reasonable expenses incurred in moving to and/or from the unit.

(6) No eviction pursuant to this subsection shall be allowed in any condominium or stock cooperative unit which has been converted from an apartment or other rental unit after April 10, 1979, unless the Rent Control Board has issued a removal permit or

declared a vested right for said unit. As used in this subpart, a unit shall be deemed converted after April 10, 1979, if on April 10, 1979, the recorded tract map or parcel map for the property showed the unit as included in the property.

(i) The landlord seeks to recover possession to demolish or otherwise remove the controlled rental unit from rental residential housing use after having obtained all proper permits from the City of Santa Monica.

Notwithstanding the above provisions, possession shall not be granted if it is determined that the eviction is in retaliation for the tenant reporting violations of this Article, for exercising rights granted under this Article, including the right to withhold rent upon authorization of the Board under Section 1803(q) or Section 1809 or for organization other tenants. In any notice purporting to terminate tenancy the landlord shall state the cause for the termination, and in any action brought to recover possession of a controlled rental unit, the landlord shall allege and prove compliance with this Section.

Any violation of this Section shall render the landlord liable to the tenant in a civil action for actual and punitive damages. The prevailing party in an action based upon this Section shall recover costs and attorneys fees.

1807. Non-waiverability

Any provision, whether oral or written in or pertaining to a rental housing agreement whereby any provision of this Article for the benefit of the tenant is waived, shall be deemed to be against public policy and shall be void.

1808. Judicial Review

A landlord or tenant aggrieved by any action or decision of the Board may seek judicial review by appealing to the appropriate court within the jurisdiction.

1809. Civil Remedies

(a) Any landlord who demands, accepts, receives, or retains any payment of rent in excess of the maximum lawful rent, in violation of the provisions of this Article or any rule regulation or order hereunder promulgated, including the provisions ensuring compliance with habitability standards and registration fee requirements, shall be liable in a civil action to the tenant from whom such payments are demanded, accepted, received or retained, for reasonable attorney's fees and costs as determined by the court, plus damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the maximum lawful rent. A civil penalty of treble the amount by which the payment or payments demanded, accepted, received or retained exceeds the maximum lawful rent shall be awarded against the landlord upon a showing that the landlord has acted willfully or with oppression, fraud or malice. No administrative remedy need be exhausted prior to filing suit pursuant to this subsection.

(b) In lieu of filing a civil action, a tenant may file an administrative complaint. The Board shall establish by rule and regulation a hearing procedure similar to that set forth in Section 1805(d).

(1) The rules and regulations adopted by the Board shall provide for final Board action on any complaint for excess rent within one-hundred and twenty (120) days following the date of filing of the complaint.

(2) In any administrative hearing under this Section, a landlord who demands, accepts, receives or retains any payment of rent in excess of the maximum lawful rent shall be liable for damages in the amount by which the payment or payments demanded, accepted, received or retained exceeds the maximum lawful rent and may be liable for an additional amount not to

exceed Five Hundred Dollars ($500), for costs, expenses incurred in pursuing the hearing remedy, damages and penalties. The tenant shall bear the burden of proving entitlement to the penalty. The tenant may deduct the penalty and award of damages from future rent payments in the manner provided by the Board. An order authorizing rent withholding under this Article shall survive the sale or other transfer of the property and shall be binding upon successors of the landlord against whom the order was made. If a tenant authorized to withhold rent under this Article vacates the property, the landlord shall pay to such tenant a sum equal to the balance of the rent that the tenant could have withheld.

(c) If the tenant from whom such excessive payment is demanded, accepted, received or retained in violation of the foregoing provisions of this Article or any rule or regulation or order hereunder promulgated fails to bring a civil or administrative action as provided for in Section 1809(a) and 1809(b) within one hundred and twenty (120) days from the date of occurrence of the violation, the Board may settle the claim arising out of the violation or bring such action. Thereafter, the tenant on whose behalf the Board acted is barred from also bringing an action against the landlord in regard to the same violation for which the Board has made a settlement or brought action. In the event the Board settles said claim, it shall be entitled to retain the costs it incurred in settlement thereof, and the tenant against whom the violation has been committed shall be entitled to the remainder.

(d) The appropriate court in the jurisdiction in which the controlled rental unit affected is located shall have jurisdiction over all actions brought under this Section.

1810. Criminal Remedies

Any landlord violating this Article shall be guilty of a misdemeanor. Any landlord convicted of a misdemeanor under the provisions of this Article shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

1811. Injunctive and Other Civil Relief

The Board, and tenants and landlords of controlled units, may seek relief from the appropriate court within the jurisdiction within which the affected controlled rental unit is located to enforce any provision of this Article or its implementing regulations or to restrain or enjoin any violation of this Article and of the rules, regulations, orders and decisions of the Board.

1812. Partial Invalidity

If any provision of this Article or application thereof to any person or circumstances is held invalid, this invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable. This Article shall be liberally construed to achieve the purposes of this Article and to preserve its validity.

1813. Relationship to Article XX

Section 1803(t) of this Article shall not apply to any building for which approval has been received pursuant to Article XX (Tenant Ownership Rights Charter Amendment) of this Charter. All other provisions of this Article, however, shall continue to apply with full force and effect to each unit in any building receiving approval pursuant to Article XX. Tenants residing in such units, whether or not "qualifying," "participating," or any other such designation under Article XX, shall enjoy all the rights and remedies provided by this Article without limitation as to duration or to ownership of the unit. This Section is

declarative of existing law and does not impose any new requirements or limit any existing ones.

1814. Existing Board Practices

To the extent that the amendments to Article XVIII adopted at the same time as this Section incorporate rules, regulations and practices of the Rent Control Board existing on the date of the adoption hereof, this amendment is declarative of existing law and does not impose any new requirements or limit any existing ones.

1815. Single Family Homes

Single Family homes that were not used for residential rental purposes on July 1, 1984 are automatically exempt from the provisions of this Article. Single family homes that are not exempt under the preceding sentence are subject to all requirements of this Article, but shall be permanently exempted by the Board upon proof that the home has been continuously occupied by the owner for a period of two years as a principle place of residence after voluntary vacancy by the tenant or lawful eviction of the tenant. An owner may have only one exemption under this Section at any one time.

1820. State Owned Property

This Article shall not apply to any property which is part of the State Park System or sovereign tidelands and owned by the State of California on July 1, 1990.

[Section 1820 Adopted 11/6/90; Effective 12/10/90]

[Article XVIII Adopted 4/10/79}

[Article XVIII Amended 11/4/84; Effective 12/6/84]